

EXHIBIT F

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case Nos. 08-01789-BRL, 09-01154-BRL, 10-03114-BRL
4 - - - - -x
5 In the Matter of:
6 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,
7 Debtor.
8 - - - - -x
9 SECURITIES INVESTMENT PROTECTION CORPORATION
10 Plaintiff,
11 -against-
12 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,
13 Defendant.
14 - - - - -x
15 IRVING PICARD, TRUSTEE,
16 Plaintiff,
17 -against-
18 VIZCAYA PARTNERS LIMITED, et al.,
19 Defendants.
20 - - - - -x
21 IRVING PICARD, TRUSTEE,
22 Plaintiff,
23 -against-
24 ADELE FOX,
25 Defendant.

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U.S. Bankruptcy Court
One Bowling Green
New York, New York

September 14, 2010
10:04 AM

B E F O R E:
HON. BURTON R. LIFLAND
U.S. BANKRUPTCY JUDGE

1 Adversary proceeding: 08-01789-brl Securities Investor
2 Protection Corporation v. Bernard L. Madoff Investment
3 Securities, LLC.

4 1) (cc-2895) Notice of Hearing on Fourth Applications For
5 Interim Compensation For Services Rendered And Reimbursement of
6 Actual and Necessary Expenses Incurred by Applicants

7
8 Adversary proceeding: 08-01789-brl Securities Investor
9 Protection Corporation v. Bernard L. Madoff Investment
10 Securities, LLC.

11 1) (cc-2883) Trustee and Baker & Hostetler LLP Application For
12 Allowance Of Interim Compensation For Services Rendered And
13 Reimbursement of Actual and Necessary Expenses Incurred

14
15 2) cc-(2884) Windels Marx Lane & Mittendorf, LLP Application
16 for Allowance of Interim Compensation for Services Rendered and
17 Reimbursement of Actual and Necessary Expenses Incurred from
18 February 1,2010 through May 31, 2010 and Request for Partial
19 Release of Holdback for Windels Marx Lane & Mittendorf, LLP,
20 Special Counsel

21
22 3) (cc-2886) Eugene F. Collins As Special Counsel For The
23 Trustee Application For Allowance Of Interim Compensation For
24 Services Rendered And Reimbursement of Actual and Necessary
25 Expenses Incurred

1
2 4) (cc-2887) Williams, Barristers & Attorneys As Special
3 Counsel To The Trustee Application For Allowance Of Interim
4 Compensation For Services Rendered And Reimbursement Of Actual
5 And Necessary Expenses

6
7 5) (cc-2888) Attias & Levy As Special Counsel For The Trustee
8 Application For Allowance Of Interim Compensation For Services
9 Rendered And Reimbursement of Actual and
10 Necessary Expenses Incurred

11
12 6) (cc-2889) SCA Creque as Special Counsel To The Trustee
13 Application For Allowance Of Interim Compensation For Services
14 Rendered

15
16 7) (cc-2890) Schiltz & Schiltz as Special Counsel To The
17 Trustee Application For Allowance of Interim Compensation For
18 Services Rendered And Reimbursement Of Actual and
19 Necessary Expenses Incurred

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21 8) (cc-2891) Hogan Lovells International LLP (Formerly Lovells
22 LLP) As Special Counsel To The Trustee Application For
23 Allowance Of Interim Compensation For Services Rendered And
24 Reimbursement Of Actual And Necessary Expenses Incurred
25

1 9) (cc-2892) Mishcon de Reya As Special Counsel To The Trustee
2 For Allowance Application Of Interim Compensation For Services
3 Rendered

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5 10) (cc-2893) Kugler Kandestin, LLP As Special Counsel To The
6 Trustee Application For Allowance Of Interim Compensation For
7 Services Rendered And Reimbursement of Actual and Necessary
8 Expenses

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10 11) (cc-2894) Higgs Johnson Truman Bodden & Co. As Special
11 Counsel To The Trustee Application For Allowance of Interim
12 Compensation For Services Rendered And
13 Reimbursement Of Actual And Necessary Expenses Incurred

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25 Transcribed by: Zipporah Geralnik

A P P E A R A N C E S :

BAKER AND HOSTETLER LLP

Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and Bernard
L. Madoff

45 Rockefeller Plaza

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BY: DAVID J. SHEEHAN, ESQ.

IRVING H. PICARD, ESQ.

SECURITIES INVESTOR PROTECTION CORPORATION (SIPC)

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Suite 800

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BY: KEVIN H. BELL, ESQ.

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A P P E A R A N C E S (continued):

WINDELS MARX LANE & MITTENDORF, LLP

Attorneys for SIPA Trustee and Chapter 7 Trustee

156 West 56th Street

New York, New York 10019

BY: ALAN NISSELSO, ESQ.

REGINA GRIFFIN, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Good morning.

3 IN UNISON: Good morning, Your Honor.

4 THE COURT: Please be seated.

5 THE CLERK: SIPC v. Bernard L. Madoff Investment
6 Securities, LLC.

7 MR. SHEEHAN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. SHEEHAN: David Sheehan of Baker Hostetler counsel
10 to the trustee, Irving Picard. This morning here with me is
11 Kevin Bell from the Securities Investor Protection Corporation,
12 Mr. Nisselson and his counsel, Regina Griffin, for Windels Marx
13 and, of course, the trustee.

14 THE COURT: Are there any other appearances?

15 MR. SHEEHAN: No, I don't think so, Your Honor.

16 Your Honor, there are a number of matters on before
17 you this morning all involving interim fee applications. The
18 only one of which is opposed is that of Baker Hostetler and the
19 trustee, Mr. Picard. What I would propose is that we deal with
20 the unopposed applications first. That is with Your Honor's
21 permission.

22 THE COURT: That's acceptable.

23 MR. SHEEHAN: Your Honor, before you this morning are
24 applications for third interim fee application of Windels Marx
25 Lane & Mittendorf, counsel to Mr. Nisselson who is still

1 continuing as a Chapter 7 trustee in connection with the
2 Bernard L. Madoff matter. As I said, there are no -- there is
3 no opposition to this application. Since the inception of Mr.
4 Nisselson's work as trustee and that of his counsel, they have
5 rendered invaluable service to the trustee in numerous
6 litigations that they've already commenced or are underway
7 involving significant corporate transactions engaged in by Mr.
8 Madoff and his family, principally BOM Air (ph.) family, the
9 Madoff Energy, Primax and a number of others all of which are
10 very convoluted transactions engaged in by Mr. Madoff, as I
11 said, his family and, in some instances, third parties
12 utilizing the customer property of BLMIS for their own ill
13 gotten gains.

14 As I say, the work has been first rate. It's been a
15 pleasure to work with the Windels Marx firm and the trustee and
16 his counsel would strongly recommend that this application be
17 approved.

18 THE COURT: Does anyone want to be heard?

19 MR. BELL: Your Honor, Kevin Bell on behalf of the
20 Securities Investor Protection Corporation. SIPC has reviewed
21 the application very thoroughly, Your Honor, has discussed the
22 application with Windels Marx. There have been certain
23 adjustments made after SIPC's suggestions. The SIPC supports
24 the interim compensation and expenses as well as the release of
25 190,000 dollars that was previously withheld prior to awards

1 this Court has made.

2 THE COURT: Does anyone else want to be heard? I'm
3 inclined to grant the application.

4 IN UNISON: Thank you, Your Honor.

5 MR. SHEEHAN: Your Honor, the balance of the
6 applications which I'm going to do within a group are all
7 interim fee applications in connection with counsel retained by
8 the trustee and various jurisdictions in Europe and in the
9 Caribbean.

10 The first is the application of Eugene F. Collins. He
11 is located in Ireland. There are several funds in Ireland. We
12 are in the process of negotiating with them at this point
13 therefore it would be inappropriate to get into details but
14 suffice it to say, as everything associated with the Bernie
15 Madoff matter, is -- involves significant dollars. They
16 certainly are -- it is true here.

17 Thema International is one of the feeder funds that
18 we're negotiating with and there are, as I said, significant
19 dollars involved. If, in fact, we cannot resolve those with
20 the impending date of December 11th, Your Honor, we will surely
21 be seeing a complaint in connection with that and Mr. Collins
22 will be of great assistance to us there.

23 Mr. Williams -- the Williams firm works with us in
24 Bermuda. In Bermuda, there are a number of feeder funds that
25 are involved, one of -- and we have, in fact, secured and

1 restrained 110 million dollars. Needless to say, there's a few
2 people fighting over that including Mr. Picard as trustee. We
3 are fully engaged with Alpha Prime which is the principal
4 feeder fund there. Mr. Williams has been assisting us in those
5 efforts. Again, efforts are trying to be made to resolve that.
6 We're not sure where that is going to end up but more than
7 likely in the form of a complaint giving the impending date.

8 Gibraltar, Your Honor has a lot of familiarity with
9 since you've already entered a default judgment in the about of
10 180 million dollars in favor of Mr. Picard as trustee. We are
11 in the process of seeking the enforcement of that, with Your
12 Honor's assistance, with the court in Gibraltar. We've had, as
13 Your Honor knows, a good deal of success on several fronts
14 there including the production of documents and an appeal.
15 That appeal resulted in 30,000 pounds being awarded to Mr.
16 Picard as trustee under the English system of the winner goes
17 the spoils. So we actually got paid for our discovery efforts
18 there. And the Attias & Levy firm has been of extraordinary
19 help in that regard. It's a very complex situation and we've
20 has, as I've said, much success.

21 BVI is one of the more difficult situations. There
22 are --

23 THE COURT: Get me back to the Gibraltar.

24 MR. SHEEHAN: Yes, Your Honor.

25 THE COURT: Has there been a reaction to the Court's

1 correspondence with he Gibraltar court?

2 MR. SHEEHAN: Yes. There has, Your Honor. So, the
3 reaction has been positive on several fronts. The court
4 certainly is inclined to view our position favorably there, so
5 much so that several of the parties have -- if Your Honor will
6 recall, because it was a default, we invited them, if they
7 wished, to come here to litigate. We weren't concerned about
8 litigating the issue, just that they weren't appearing.

9 With Your Honor's arrival on the scene through your
10 letter to the court, they've now suggested to us that perhaps
11 they'd be better off coming here and seeking our assistance in
12 relief from the default and having a trial take place which, of
13 course, we'd be happy to do. So I think we've -- I don't know
14 if that's how it's going to work out, Your Honor. They're
15 considering your options --

16 THE COURT: What about the funds on deposit and the
17 court in Gibraltar?

18 MR. SHEEHAN: They're still sitting there on deposit.
19 They have not been moved over to Mr. Picard at this point. But
20 I think it's -- it's always difficult to predict in the area of
21 litigation, Your Honor, but the momentum seems to be in favor
22 of the trustee.

23 The -- in the British Virgin Islands, there are twenty
24 feeder funds. The SCA Creque firm is the firm that we've
25 retained there, has been of assistance to us in a number of

1 fronts. We have not instituted other than in the Harley
2 situation a litigation there. We are negotiating with all of
3 the representatives of the feeder funds but, needless to say,
4 given the significant amount of money involved, about 1.5
5 billion dollars in the aggregate, we are preparing complaints
6 in the event that we cannot resolve those matters.

7 Luxembourg involves the Luxalpha and related funds that
8 are there. That represents about 330 million dollars at this
9 point, Your Honor. Schiltz & Schiltz has again been working
10 with us. Our difficulty there has been obtaining documents, as
11 Your Honor is probably well aware of, the privacy laws in
12 France, Switzerland and Luxembourg are pretty stringent. We're
13 working very hard to get around those and to negotiate relief
14 because I think, ultimately, if we have to litigate those
15 issues, I'm persuaded that we have a better position than they
16 believe we have because they're all subject to jurisdiction of
17 this court and I think the law favors us -- you may comment,
18 but that's where we are. We've managed to persuade them of
19 that and I think we're going to get most of the documents but
20 again, given where we are and the amount of money involved,
21 close to half a billion dollars, I believe that we will be
22 probably again instituting litigation here. So, in the next
23 several months, I think Your Honor is going to see a
24 significant number of filings of complaints against feeder
25 funds. Because notwithstanding the diffi -- the efforts,

1 extensive efforts by the trustee's counsel and his counsel in
2 these jurisdictions, the complexity, nature and scope of these
3 matter and the initial reaction, of course, always being that I
4 didn't know and us then having to persuade them that perhaps
5 they did, it takes a good deal of time and we're still in that
6 process. So I'm persuaded that more than likely we're going to
7 end up with more complaints than settlements in this regard.

8 London, there's two counsel here and the reason for
9 that is Hogan and Lovells. We had Lovells but when they got
10 together with Hogan, they were conflicted out. We couldn't
11 work out that conflict so we brought in a very prominent firm
12 in London, Mishcon de Reya as the special counsel to succeed
13 them. That has been a very smooth transition. We've had very
14 good success there in terms of, again, discovery of the feeder
15 funds. A good many of the feeder funds are managed by firms in
16 the -- London and so therefore they maintain most of their
17 documents and we had an application there recently and obtained
18 documents again. Again, one, an 80,000 pound award to the
19 trustee for the costs associated with that endeavor.

20 So we've had a good deal of success again in that
21 forum in terms of getting documents which, again, underscores
22 why I think we're going to have success elsewhere. The -- on
23 top of that we've also interviewed all fifteen of the employees
24 of MSIL. We are preparing and we'll have a full report for
25 this Court as to the nature and background of the involvement

1 of the London operation and what it was doing in connection
2 with the OMIS here in the United States. It's, on the surface,
3 a money laundering operation but there's much more deep
4 involvement by a number of individuals all of whom will be
5 pursued either here in the United States or through Mr. Picard
6 because he is, as Your Honor knows, recognized in the
7 proceedings in the liquidation of MSIL through that working
8 with Mr. Acre (ph.) who is the joint liquidator.

9 THE COURT: To that end, and as I indicated to the
10 Supreme Court of Gibraltar, Mr. Picard has very strong standing
11 authority pursuant to Section 1505 of our Bankruptcy Code.

12 MR. SHEEHAN: Yes, I agree, Your Honor. And I think
13 this case -- I think Your Honor has noted this in the past and
14 I thin it's absolutely true that when we're all done here, in
15 the next whatever number of years it takes to get this done,
16 there's going to be some very interesting law made in the area
17 of Chapter 15 and evolved of Mr. Picard and foreign
18 jurisdictions.

19 We intend to vigorously pursue the strength afforded
20 us by the Bankruptcy Code and to incorporate that into, I
21 think, things that we'll be able to do in Europe. Working with
22 Mr. Acres who as you know is the joint liquidator for missile
23 (sic) or we call MSIL. And I think working in tandem, I think
24 we can accomplish many things there and that's what we're
25 looking forward to doing. And Mishcon de Reya is now

1 succeeding Lovells in spearheading that effort and they've done
2 a fine job.

3 THE COURT: You also have some very strong opinions
4 from the UK high court --

5 MR. SHEEHAN: Yes.

6 THE COURT: -- from recently.

7 MR. SHEEHAN: Yes, the Rubin decision is a terrific
8 decision for us, Your Honor, in forcing a default judgment, of
9 all things, in the courts there which I thought was a terrific
10 outcome for us. It's on appeal but I think -- one hopes that
11 the law will continue to swing in our favor.

12 THE COURT: Well, it's based upon the Cambridge
13 decision --

14 MR. SHEEHAN: Yes.

15 THE COURT: -- of Lord Hoffmann which is essentially
16 the main comment the -- recommendation of the highest courts in
17 the UK.

18 MR. SHEEHAN: Yes. That's right.

19 Then the last two, Your Honor, Canada, there's really
20 only one event occurring up there. There is some feeder fund
21 activity there. It's more in the way of third-party
22 investment. Kugler Kandestin firm has done fine work for us
23 there. And last but not least of, there's the Caymans. There
24 are four funds in the Cayman Islands. The Higgs Johnson firm
25 has been with us almost from the outset of this litigation, has

1 provided, again, invaluable assistance to us in terms of local
2 courts there, representing the trustee and assisting us in both
3 negotiations of -- with the feeder funds as well as in
4 discovery efforts.

5 So, Your Honor, on balance, all of the counsel that
6 we've retained we find to be fine colleagues who have done
7 great work for us who will continue to do so going forward and
8 the trustee and his counsel would recommend that all of those
9 applications be approved. And I note, finally, for the record,
10 that they are indeed all unopposed.

11 THE COURT: Does anyone want to be heard?

12 MR. BELL: SIPC has support its recommendation in
13 support of these applications by the trustee's special counsel
14 and stands on its recommendation.

15 THE COURT: The applications are granted.

16 MR. SHEEHAN: Thank you, Your Honor. Mr. Picard will
17 address the objections that were filed with regard to his
18 application and that of the firm.

19 THE COURT: Sure.

20 MR. PICARD: Good morning, Your Honor. In the fourth
21 interim application for compensation, it cover a four month
22 period from February 1st through May 31st, I'm seeking approval
23 for \$601,202.25 in fees and disbursements of \$39.63. At this
24 time I'm seeking payment of eighty-five percent in accordance
25 with the amended order establishing compensation procedures and

1 the full \$39.63 of disbursements. SIPC has filed its
2 recommendations in favor of my portion of the application.

3 As Your Honor knows, in this case all the costs of
4 administration are being paid by SIPC including the fees of the
5 trustee as well as counsel including all the special counsel
6 that Mr. Sheehan has addressed. And so it will -- it has
7 already agreed to advance the amounts that are necessary to pay
8 these applications. In connection with my request, I expended
9 809.7 hours at an average hourly rate of \$742.50 which includes
10 a ten percent discount of my normal rates and I've also written
11 off about 102,000 dollars in the interest of judicious billing
12 procedures.

13 The primary areas of my work are set forth in the
14 application both in the body and Exhibit B. Major areas involve
15 the claims review and related matters, Bankruptcy Court
16 litigation, case administration, avoidance actions, trustee
17 investigation and there's some significant time in connection
18 with the discussions with the U.S. Attorney's office.

19 As Your Honor will recall, we've recovered about 1.5
20 billion dollars since the beginning of the proceeding. Contrary
21 to statements in one -- at least one of the objections, getting
22 that money was not easy. You may recall early on we came to
23 court with a number of stipulations that were hotly negotiated
24 with a number of banks in order to recover money and securities
25 that Mr. Madoff had in his participant account at the

1 Depository Trust also were not easy to get because, under the
2 circumstances, each of these financial institutions wanted to
3 make sure that we really were entitled to recover these things.
4 So that activity took a period of time.

5 In addition, we've settled two major pieces without
6 litigation. One is the Optimal settlement for 235 million
7 dollars and the other was the Levy family settlement for 220
8 million dollars. On top of that, we've also been able to
9 settle in the context of claims processing a lot of potential
10 preference actions to the tune of about fifty million dollars
11 at this point. And in virtually all of the cases, the parties
12 did not have to pay money to us rather a portion, or in some
13 cases all, of the SIPC advance was used to cover the
14 settlement. And all of those funds, the billion-five, is, in
15 my view, customer property and will be subject to allocation
16 and distribution in the near future.

17 One of the other objections seems to raise the
18 question about we haven't shown much by way of results. This
19 was a Ponzi scheme of longstanding, as you heard a moment ago,
20 broad geographical breadth. And it's not unusual in cases of
21 this kind that results don't show up the minute you do
22 something. But I think, as Mr. Sheehan indicated, over the
23 course of the next couple of months, the -- you will see and
24 everyone will see evidence of the work that has been done
25 during the current period and earlier periods.

1 A number of the other objections, which I don't
2 propose to respond to, really relate to the difference of
3 opinion as to the SIPA statute and how it should be
4 interpreted. Your Honor has ruled on a number of those issues
5 in the past. Some have been taken on appeal and, in fact, one
6 of the objectors has sought leave to appeal three of the prior
7 fee applications. Two have been denied by the District Court;
8 the third one was recently assigned to a judge and we would
9 expect that a similar result will occur.

10 Just to put a few facts on the record. We've received
11 16,374 customer claims. That includes duplicates, amendments,
12 modifications, supplements and even a few untimely claims. As
13 of last Friday, we had determined 13,350 claims. That's 81.5
14 percent. Of that group, we had allowed 2,213 for 5,629,000,000
15 dollars and SIPC has committed about 723.4 million dollars for
16 payment on those claims.

17 Of the approximately 3,000 claims left to be
18 determined, there are about 2100 form claimants who, on the
19 record, don't appear to have accounts. A number of these
20 claimants may be banks of broker-dealers and there is a
21 provision in the SIPC statute that if they are custodial
22 accounts, the beneficiaries of those accounts may be entitled
23 to SIPA coverage. So it's taking some extra time to work
24 through those kinds of claims. A lot of the other claims
25 involve insiders, Madoff family members, former employees and

1 feeder funds against we have significant preference claims so
2 we have not determined them as yet.

3 We have currently pending nineteen avoidance actions
4 seeking about fifteen billion dollars. We have -- and I know
5 we have talked in the past about one or another -- we have some
6 significant settlements that we've been working on. We hope
7 that some of the related issues will get resolved in the very
8 near future and that we will be able to present them to the
9 Court and that before the end of the year we'll be able to make
10 a distribution of a significant amount of money, larger than
11 the 1.5 billion we have.

12 One of the objections raised a question of how much
13 we've calculated, based on our money in/money out approach, the
14 total allowed claims will be. We publicly stated on a number
15 of occasions as well as in court, that that number will be no
16 more than twenty billion. I believe it will be a shade less
17 but we have a number of claimants that didn't file claims. We
18 also have a number of issues, of course, with the preference
19 actions and depending on how some of those play out the number
20 would be less than twenty billion.

21 Based on the record of this proceeding, Your Honor, I
22 request that you deny the objections and also the record in the
23 proceeding in general and award me the amount that I've
24 requested that SIPC has supported. If you have any other
25 questions, I'd be happy to try to respond.

1 THE COURT: Does anyone want to be heard? There is no
2 response. Is there anything else before me?

3 MR. SHEEHAN: Just the fees of Baker. I can talk for
4 a few minutes, Your Honor.

5 THE COURT: Sure.

6 MR. SHEEHAN: Your Honor, I feel somewhat inhibited
7 here because, as Your Honor knows, we don't file the narrative
8 associated with these applications and yet it is an extremely
9 telling narrative in terms of the work that's performed by the
10 firm. So to one extent, we're disarmed. We can't really talk
11 greatly about this because they are very sophisticated issues
12 involving multiple attorneys across a wide spectrum of law
13 suits. In fact, in one of our recent applications, several of
14 our colleagues objected to things that we actually did disclose
15 suggesting that we perhaps breached even 408 by doing so.

16 Notwithstanding that inhibition, however, I feel
17 compelled to, because of some of the statements that have been
18 made, to explain that what is involved here is an enormous
19 task. And let me break it down into three basic categories and
20 not burden the Court too much with a statement in support of
21 this but I think it is important, for purposes of the record,
22 to make it plain what's involved here. We, first of all, have
23 the customer claims, as Mr. Picard said, over 16,000. Now, a
24 good many of those involve feeder funds but -- and that may --
25 you may look at that and say well, on its face, in several

1 weeks we're going to be arguing this motion with regard to
2 feeder fund investors and what should happen with them.

3 Well, that's not something you just casually arrive at
4 and it's not something you do by just looking badly at the
5 claim or without any research or looking at the feeder fund
6 itself. A great deal of research had to be done both legally
7 and, more importantly, factually and forensically with regard
8 to each and every customer claim over 8,000 as well as all of
9 the feeder funders involved. That's just one aspect of this
10 case. That is an aspect to the case that I spend a lot of my
11 time on. It's a very important thing, there are a number of
12 attorneys, very qualified attorneys working on that, that's
13 absolutely true.

14 But when you compare that to the work that went into
15 putting together -- and anyone who's read it knows what the
16 work was to do the Fairfield Greenwich amended complaint, the
17 research that went into that , the digging in, finding out all
18 of those things that went on for years and years against what?
19 A uniform front of silence. No one's cooperating here.
20 Starting with Mr. Madoff and all the way down. Either they are
21 being silent or they're represented. Everything the trustee
22 does here, he does on his own but virtue of going through the
23 books and records, using the strong arm of 2004, taking
24 depositions and issuing subpoena for records.

25 This is a vast and enormous task. It requires a wide

1 spectrum of talent throughout the firm in order to do so.
2 There aren't just corporate issues here, there aren't just
3 bankruptcy issues. Just think for the moment, if you were
4 involved as a financial institution in the 19 -- late 1990's in
5 to 2000 and you watched Mr. Madoff year in and year out with
6 those kind of returns, would you think about leveraging that?
7 Well, I'll tell you, they did.

8 Banks, financial institutions, many of them involved
9 in very sophisticated notes and swaps transactions, trades on
10 those. Unbelievably sophisticated work being done by a wide
11 variety of people prominent throughout the financial services
12 industry. The names will ring through this courtroom as to who
13 was involved and who was using Bernie Madoff and what they
14 knew. All of that is out there. That is all forthcoming. And
15 that is only happened because of all the hard work that Mr.
16 Picard and his trustee and all the people that he's retained
17 the consultants, also paid for by SIPC; forensic accountants at
18 FTI, and Alix and other experts, all of whom have assisted us
19 in this endeavor.

20 That's just het feeder funds. On top of that, there
21 are going to be, literally, and unfortunately, hundreds of
22 lawsuits. Because this is, as I've often said to Your Honor, a
23 Ponzi scheme. There's nothing else but other people's money
24 involved. So there are those, those net losers, that's who
25 truly we represent; those net losers who did not get their

1 money back. We are going to seek from those net winners who
2 got their money, some of that back.

3 The trustee is exercising great discretion in that
4 regard and you'll see that. In the next coming weeks there
5 will be submitted to Your Honor a broad plan associated with
6 this that has been well thought out and researched by the
7 trustee for Your Honor's consideration and, quite frankly, all
8 of our adversaries. We would not embark on this kind of an
9 endeavor without including everyone within the process; our
10 adversaries as well as our colleagues and of course the Court.

11 And at the end of the day, we're hoping that most of
12 those can be resolved amicably at least cost and least pain to
13 those folks who are out there. But they must realize that as
14 victimized as they may feel, the larger victim is, indeed,
15 those who did not get their money back. And the trustee,
16 empowered by SIPA and by the Bankruptcy Code, is doing what
17 equity always does. Equity is a quality and that is exactly
18 what we are trying to achieve here.

19 So there are literally dozens and dozens of attorneys
20 and those who've objected and said yes, it looks like a lot of
21 lawyers are involved, that's absolutely true. Demanded by the
22 scope and magnitude of what we're confronted by. And we work
23 very hard every day to do that. And at some point, I won't have
24 to speak in vagaries as I am here today; I understand that.
25 But I wanted Your Honor to know that we do take this very, very

1 seriously, that we work very, very hard and that, as Mr. Picard
2 has said, in the next several weeks, months, all of that will
3 be forthcoming, all of that will be spread upon the record
4 including not only settlements that I think will be forthcoming
5 but in addition to that litigation that will demonstrate the
6 scope and magnitude of this case.

7 So I would recommend, Your Honor, respectfully, that
8 you approve our application here today.

9 MR. BELL: Your Honor, Kevin Bell for SIPC. This is
10 the fourth application on which SIPC is stating its position.
11 We have filed a recommendation in support. This is week
12 ninety-three. On December 15th, 2008, I filed SIPC's
13 application in the District Court. Those ninety-three weeks
14 have been a long time in SIPC's life. We have observed
15 everything that has occurred that Mr., Sheehan has alluded to.
16 We have read every page and every entry is the thousand of
17 pages of time records that were submitted to SIPC and we have
18 made suggested changes -- we have suggested changed to both the
19 trustee and counsel which, for the most part, were accepted and
20 resulted in write-offs and reduction of the fees sought.

21 Mr. Sheehan has alluded to and it will be very helpful
22 when December 11th comes, when the next fee application occurs,
23 to be able to let the world see what SIPC knows. And that is
24 how involved this case is and with the in-depth work that
25 trustee and his lawyers, particularly Baker Hostetler, Windels

1 and the numerous consultants the trustees have retained have in
2 pursuing these assets for the benefit of the fund of customer
3 property and a future distribution to those individuals that
4 qualify as customers to get the net losers back their fair
5 share of the money that was previously distributed but he
6 crook, Mr. Madoff.

7 SIPC has a very in-depth awareness of each nook and
8 cranny of the customer claims review and is extremely aware of
9 those claims that remain to be determined, as noted by the
10 trustee earlier. To advise the Court, earlier this month
11 Congress has requested and received a reply from SIPC about
12 when it expects all the claims to be resolved and I am pleased
13 to tell the Court that SIPC has advised the court that it, in
14 consultation with the trustee, expects all claims to be
15 determined by the end of the year. All 3,000 or so that remain
16 to be determined.

17 So with regard to the fees, you know, the objections
18 are repetitious of what has hap -- what has occurred and prior
19 to and I've made statements on the record and I make these
20 statements for the record because I would expect we will see an
21 appeal by the same individuals to the District Court from this
22 Court's award of the fees. But the tasks that have been
23 performed by the trustee, as outlined in the time records and
24 outlined to SIPC, I can report to the Court have been
25 thoroughly and professionally addressed by counsel. There is

1 no discrepancy between what trustee and counsel have requested
2 and what SIPC recommends. And SIPC would recommend to the
3 Court, as it did in its written statement, that the Court
4 approve and award the fees as requested by trustee and counsel.
5 Thank you, Your Honor.

6 THE COURT: Does anyone else want to be heard?

7 Ell, as has been pointed out, there have been several
8 objections to the fee requests. Nobody's bothered to come to
9 court with respect to arguing in favor of their objections.
10 I'm somewhat concerned about that and the Court's taken the
11 time and trouble to contact the objectants to ascertain whether
12 they are coming here to stand by the papers that they filed.
13 The answer has been no and there has not been any response.

14 I'm surprised and a little bit disappointed because it
15 is important that when legitimate objections are filed with the
16 Court at least there's an opportunity for the recipients of
17 those objections to face the objectors and to discuss, on the
18 merits, the positions that they take. This is the fourth fee
19 request and, essentially, with respect to this fee request,
20 basically the same arguments are advanced in support of these
21 objections as were advanced previously.

22 The objections previously, as have been pointed out by
23 other courts and this Court, all revolve around the methodology
24 used by the trustee to compute net equity. That was observed,
25 for example, by Judge Daniels in his opinion of January 11th,

1 2010. That issue is now fast tracked to the second circuit and
2 the disagreement with a litigator posture is not really the
3 appropriate basis to object to a request for fees.

4 Under these circumstances, it is a bit disconcerting
5 to the Court. Many of the arguments raised in the objections
6 deal with not only the disagreement with the litigation posture
7 taken by the trustee, SIPC and the law firm but with respect to
8 the actual process and administration of the case which has
9 been discussed at great length here this morning as a thorough
10 report to the Court, which I'm pleased in on this record. But
11 likewise, in connection with SIPC's letter to Congress which is
12 a public document available to all and which, essentially,
13 describes the exact status as has been described to the Court
14 this morning and is largely the response to much of the
15 objections that have been lodged here by parties who didn't
16 bother to show.

17 It is also true that this has been a very, very large
18 and complex and broad international and national set piece of
19 litigation. The sandbox is -- litigation sandbox is worldwide.
20 The issue and negotiation sandbox, likewise, is worldwide with
21 the trustee required to appear and respond to litigation, both
22 before this Court and other courts but in connection with he
23 international aspects of the proceedings.

24 And to quote statements that were made in response to
25 objections filed to the previous applications, much of the

1 expenses and cost of litigation is incurred because there is an
2 obligation, wherever the administration of the Madoff estate is
3 implicated, for the trustee to appear and deal with that. If
4 litigation is brought on, it is obvious that the trustee has to
5 go and react to it. If that litigation implicates the
6 administration of the estate, and that apparently is the case
7 with much of the request for fees here, it is also noteworthy
8 that much of the litigation effort has been spent in reaction
9 to litigation brought either by the movants, the objective --
10 objectants here or those that are aligned with them.

11 And in sum, I do find that there are no new facts or
12 arguments that have been advanced today which would alter my
13 prior findings concerning conflicts and the appropriateness of
14 the fees that have been requested here today. It is also
15 interesting, and parties seems to have lost sight of the fact,
16 that once upon a time, before Congress changed the rules, the
17 Court had some discretion to modify a trustee's fees but in SEC
18 against Charisma Securities Corp., 506 F.2d (2d Cir. 1974), it
19 was noted that the trustee had this discretion.

20 However, SIPA was amended in 1978 and now the
21 recommendations of SIPC are binding on the Court in most cases.
22 That's in the statute. I need not paraphr -- go in and
23 regurgitate the entire statute but in part, "in any case in
24 which the allowances to be paid by SIPC without the reasonable
25 expectation of recoupment, as provided in this chapter, and

1 there was no difference between the amounts requested and the
2 amounts recommended by SIPC, the Court shall award the amounts
3 recommended by SIPC."

4 So there's a mandatory shall there and one wonders why
5 Congress even bothered to involve this Court in the evaluation
6 of the fees because the statute, primarily, it leaves that to
7 SIPC to review and pay. It does not come out of the estate.
8 And under 78eee(b)(5)(C), I must approve the fees when the
9 allowance to be paid by -- is to be paid by SIPC, the fact
10 here; there is no reasonable expectation of recoupment, that
11 does not appear that there is a reasonable expectation that
12 SIPC is going to be repaid by the estate; and there's no
13 difference between the amount recommended by SIPC and the
14 amount requested by the trustee or his counsel.

15 There has been, for many of the applications here, a
16 voluntary reduction for different purposes by the trustee and
17 the various counsel here so there is no difference. So the
18 three essentials have been satisfied in connection with the
19 statute which means the Court shall. However, under the
20 circumstances presented before me, even if this was 1976 or
21 1977, I find that the discretion afforded by me equals the
22 approval that I must give based upon their current statute and
23 based upon my evaluation in a pre-1978 era, I find the request
24 reasonable and appropriate and I approve them.

25 IN UNISON: Thank you, Your Honor.

1 MR. PICARD: May I approach Your Honor --

2 THE COURT: Yes.

3 MR. PICARD: -- with an order?

4 THE COURT: And in approval I also state that the
5 objections are overruled. I have approved the order.

6 IN UNISON: Thank you, Your Honor.

7 (Proceedings concluded at 10:49 AM)

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I N D E X

RULINGS

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Granting of Application 9 2

For Interim Compensation and

Partial Release of Holdback

for Windels Marx Lane &

Mittendorf, LLP, Special Counsel

Granting of Application 16 16

For Interim Compensation For

Windels Marx Lane & Mittendorf,

Eugene F. Collins,

Williams, Barristers & Attorneys,

Attias & Levy, SCA Creque,

Schiltz & Schiltz,

Hogan Lovells International LLP,

Mishcon de Reya,

Kugler Kandestin, LLP and

Higgs Johnson Truman Bodden & Co.

Granting of Application 31 25

For Interim Compensation For

Baker & Hostetler LLP

C E R T I F I C A T I O N

I, Zipporah Geralnik, certify that the foregoing transcript is
a true and accurate record of the proceedings.

**Zipporah
Geralnik**

Digitally signed by Zipporah Geralnik
DN: cn=Zipporah Geralnik, c=US
Reason: I am the author of this document
Date: 2010.09.16 17:26:41 -04'00'

Zipporah Geralnik

AAERT Certified Electronic Transcriber (CET**D-489)

Veritext

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Date: September 16, 2010